3050

SUPREME COURT OF THE UNITED STATES.

No. 70.

FRANCIS WARNER, PL'FF IN ER.,

vs.

CEPHAS H. NORTON, ALBERT JEWETT, BENJAMIN C. BUZBY, JOHN C. PHELPS, JOHN P. PHELPS, ISAAC N. PHELPS, AND JAMES BEEMAN.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF ILLINOIS.

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UNITED STATES OF AMERICA,
Northern District of Illinois.

Pleas in the circuit court of the United States, for the northern district of Illinois, held at the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of the district court of the United States, for the northern district of Illinois, and in the absence of the Hon. John McLean, one of the justices of the Supreme Court of the United States, pro tempore sole judge of said circuit court, on Tuesday, the third day of June, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eightieth year.

CEPHAS H. NORTON, ALBERT JEWETT, BENJAMIN C. BUZBY, JOHN C. PHELPS, JOHN J. PHELPS, ISAAC N. PHELPS, and JAMES BEEMAN, plaintiffs,
vs.
FRANCIS WARNER, defendant.

Be it remembered, that heretofore, to wit: on the eighth day of March, in the year of our Lord one thousand eight hundred and fifty-five, the above named plaintiffs, by Messrs. Judd & Frink, their attorneys, came into the office of the clerk of the circuit court of the United States, for the northern district of Illinois, and sued out of said office their writ of summons against the above named defendant; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois.

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that you summon Francis Warner, if he be found in your district, to be and appear before our judges of our circuit court of the United States, for the northern district of Illinois, at the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of July next, to answer unto Cephas H. Norton, Albert Jewett, Benjamin C. Buzby, John C. Phelps, John J. Phelps, *John J. Phelps*, Isaac N. Phelps, and James Beman, in a plea of trespass, to their damage, as they allege, in the sum of ten thousand dollars, and have you then and there this writ.

[REC. LXX, D. T., 1857.]—1

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States of America, at Chicago aforesaid, this eighth day of March, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the seventy-ninth year.

[SEAL.]

WM. POPE, *Clerk.*
By J. T. MOULTON,
Deputy Clerk.

I hereby appoint Jacob Fry U. S. deputy marshal, for the special purpose of serving the within summons, this 8th day of April, 1855.

H. WILTON,
U. S. Marshal, Northern District of Illinois.

Executed the within summons on the tenth day of April inst., by reading the same to the within named Francis Warner. April, 1855.

HARRY WILTON,
U. S. Marshal, Northern District of Illinois.
By JACOB FRY,
Special Deputy.

Endorsed: Filed May 4, 1855.
WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the 15th day of June, A. D. 1855, said plaintiffs, by their said attorneys, filed in said clerk's office their declaration, in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES,
For the Northern District of Illinois.

Of the July term, A. D. 1855.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Cephas H. Norton, Albert Jewett, Benjamin C. Buzby, John C. Phelps, John J. Phelps, Isaac N. Phelps, and James Beeman, who are citizens of the State of New York, doing business in the city of New York under the name, style, and firm of Norton, Jewett & Buzby, plaintiffs in this suit, by Frink & Winston, their attorneys, complain of Francis Warner, a citizen of the northern district of Illinois, who was summoned, of a plea of trespass: For that the said defendant, on the 1st day of January, in the year of our Lord one thousand eight hundred and fifty-five, with force and arms, to wit, at La Salle, in the northern district of Illinois, seized, took, and carried away certain goods and chattels, to wit:

10 No. 7 morning star cooking stoves.
20 No. 8 " "
14 No. 9 " "
10 No. 10 " "
3 No. 4 coal burners.
4 No. 5 "
2 No. 6 "
1208 lbs. hollow-ware.
1 No. 7 black helt c. stove.
1 No. 8 " "
1 No 7 new world stove.
1 No. 10 " "
1 No. 7 Rochester air-tight stove.
1 No. 8 " "
1 No. 8 Lyon stove.
1 No. 7 atlas stove.
1 No. 8 "
1 No. 10 "
1 No. 9 half moon stove.
1 No. 9 bl'k dimond coal stove.
2 No. 8 Woodman stoves.
1 No. 7 premium stove.
1 No. 8 " "
1 No. 9 " "
1 No. 10 " "

1 No. 5 Lady Franklin stove. 1 coal cylinder stove. 1 No. 4 Sylvia stove, 1 No. 5 wood parlor stove, 1 No. 5 temple stove, 2 No. 4 floral stoves, 1 sheet-iron parlor stove, 3 sets tin coal fixtures, 1 10-inch coal fixtures, 3 smith bellows, 8 coal hods, 1 doz. hoes, 6 snaths, 24 spades, 48 shovels, ½ doz. steel scoops, ½ doz. 4 tind. forks.

8 doz. 10 tind. tin tea kettles.
7 " 9 " "
6 " 8 " "
8 " 7 " "

19 copper-bottomed coffee-boilers, 8 iron tea kettles, 13 tin top boilers, 42 lbs. copper boiler, 55 axe-helves, 534 lbs. assorted wire, 2 doz. scythes, 1 doz. bush-scythes, 18 hay-rakes, 8 kegs rot. nails, 14 kegs cut nails, 2 doz. box coffee mills, 2 doz. side coffee mills, 9 cistern pumps.

10 boxes 8 x 10 glass.
7 " 10 x 14 "
5 " 10 x 16 "
2 " 10 x 15 "
2 " 10 x 12 "
4 " 9 x 12 "

15 pump reals, 2 boxes Simonds' axes, 4 No. 7 premium stoves, 4 No. 8 premium stoves, 5 No. 9 premium stoves, 4 No. 10 pre-

mium stoves, 4 No. 3 atlas, 2 No. 3 new world, 2 common stoves, 2 international stoves, 1 No. 2 box stove, 1 No. 3 box stove, 15 set 7-inch holloware, 15 set 8-inch holloware, 8 set 9-inch holloware, 7 set 10-inch holloware, 1 No. 3 parlor stove, 1 doz. iron bench screw, 1 doz. 6-inch elbows, 1 doz. patent sad iron, 1 coil hemp-rope, 2 anvils, 311 lbs.; 2 cast anvils, 313 lbs.; 2 Wilkinson, 316 lbs.; 394 lbs. vices, 11 crowbars, 2 pair sleigh-bells, 439 lb. log chain, 744 lbs. cable, 300 horse-shoes, 150 lbs. ro't nails, 140 lbs. horse-nails, 50 lbs. mal'ble wrenches, ½ doz-bench axes, 1 doz. counter-brushes, 14 coal-hods, 7 dinner-bells, 10 compass-saws, 10 buck-saws, 3 rip-saws, 3 hand-saws, 3 buck-saws, 3 rip-saws, 1 hand-saw, 3 drawing-knives, 3 rip-saws, 6 hand-saws, 2 butcher-saws, 18 wood-saws, 1 comb, 17 try-squares, 1 broad-axe, 2 plaster-trowels, 18 hammers, 5 carpet hammers, 1 hammer, 5 hatchets, 4 hand-axes, 1 hatchet, 3 hand-axes, 1 doz. socket chisel-handles, 1 doz. axe-handles, 1 doz. scratch-awls, 8 brick-trowels, 150 qr. nut augers, 160 common augers, 2 doz. chisel-handles, 5 gauges, 7 farmer chisel-handles, 153 qr. augers, 2 doz. socket-chisels, ½ doz. ½, ⅝, ¾, ⅞, 1¼, 1½, 1⅝ socket-chisels, 6 hand-screws, 6 hand-saw handles, 13 plain handles, 6 riveting headers, 13 gauges, 5 chalk spools, 2 doz. molasses gates, sorted; 3 doz. auger handles, 21 hand-saws, 3 doz. sash-cords, 7 bench-screws, 17 picks, 75 lbs. sledge-hammers, 10 steel-scoops, 2 iron-scoops, 6 short-hand forks, 3 long-hand forks, 42 spades, 67 shovels, 16 scythes, 13 hoes, 20 axe-helves, 4 gr'ts, 29 stleeyards, 12 flesh-forks, 12 assorted cow-bells, 12 wolf-traps, 1 steel-trap, 1 pair seat-springs, 2 buck-saws, 7 ladles, 25 halter-chains, 4½ pr. trace-chains, 3 pr. short ones, 6 butcher cleavers, 1 meat-saw, 1 slick, 5 spring dish balances, 4 tap bows, 13 drawing knives, 10 10-inch drawing knives, 1 doz. 12-inch drawing knives, 900 cut nails, 4 coffee-mills, 3 counter scales, 16 railroad lanterns, 4 tin railroad lanterns, 93 lbs. brass kettles, 2 coffee boilers, 5 5-gallon cans, 3 1-gallon cans, 9 6-qt. covered pails, 36 tea pots, 6 patent sad irons, 10 lbs. cotton twine, 175 qr. auger bits, 5 iron spoke shaves, 2 doz. spike gimlets, 17 qr. handles gimlets, 29 10-inch flat bolts, 42 8-inch flat bolts, 18 5-inch flat bolts, 42 6-inch bolts, 20 6-inch shutter bolts, 15 6-inch chin bolts, 18 8-inch ch'n bolts, 12 9-inch bored bolts, 2 doz. 8-inch bored bolts, 48 6-inch bored bolts, 1 doz. 5-inch square butts, 1 doz. 4-inch square butts, 6-inch chin bolts, 4 3-inch flat bolts, 12 8-inch round bolts, 18 store-door locks, 8 lbs. stone blas, 10 coach wrenches, 1 iron coach wrench, 11 carpenters' dividers, 11 flat plyers, 32 pod pitts, 12 round plyers, 4 shoe punches, 3 carpenters' punches, 3 barrel bolts, 1 barrel chain, 9 4-inch screw-dividers, 9 5-inch screw-dividers, 9 9-inch screw-dividers, 12 8-inch screw-drivers, 9 7-inch screw-drivers, 11 6-inch screw-drivers, 6 5-inch screw-drivers, 1 14-inch screw-driver:

136 papers 3 oz. tacks, 149 papers 10 x 14 oz. tacks, 1¾-inch auger, 12 barn-rollers, 114 lbs. sash-weights, 4 doz. bitts, 156 shutter-lifts,

24 screws, 4 thumb-latches, 148 plat-schutchins, 14 drawer-handles, 9 nut-crackers, 6 trunk-handles, 73 padlocks, 13 brass-traps, 6 doz. japan-traps, 92 doz. till-locks, 16 trunk-locks, 10 chest-locks, 2 doz. schutchins, 10 doz. screw pinchers, 19 saw-bucks, 24 window-locks, 4 doz. lamp-hooks, 1 doz. high lamp-hooks, 5 copper-ch'r, 1 doz. B wrenches, 38 bed-wrenches, 8 12-inch brass-compasses, 29 doz. taper-files, 2 set 51 pieces knives and forks, 5 doz. 51 pieces knives and forks, 1 set tea-knives and forks, 1 doz. knives only, 2 levels, 9 doz. cotton lines, 3 doz. albata table spoons, 1 doz. tea spoons, 1 dozen German silver spoons, 3 doz. tip-tin spoons, 3 dozen plain spoons, 5 doz. German silver spoons, 100 anvils, 1 set tin spoons, 5 saw-setts, 8 saws, ½ doz. German silver spoons, 5 saw-setts, 1 dozen butcher-knives, 2 tip forks, 4 dozen silver table spoons, 5¼ dozen German silver table spoons, 2 dozen albata table spoons, 13 wood-cutters, 2 gross holloware, 10 lbs. blind-staples, 10 doz. buckets, 2 doz. rules, 2 flat 4-folds, 19 put-rings, 8 metal match safes, 6 cloth's brushes, 3 ivory rules, 1 padlock, 1 doz. 2-fold rules, ¾ doz. bells, 2 rules, 2 4-fold rules, 1 doz. coffin hinges, $\frac{5}{12}$ doz. rules, 1 qr. beef-rings, 6 doz. cupboard-catches, 8 window-catches, 2½ prs. flush-bolts, 1 boull, 1½ doz. cork-screws, 3 doz. screw-hooks, flow butt, 2 doz. tea bells, 2 doz. bells, 2 doz. gimlets, 1 doz. coke-hods, 1 qr. taper files, 1 doz. corn-knives, 4 gross screws, 4 prs. carvers, 6 butcher-knives, 14 pr. carvers, 61 butcher-knives, 20 steels, 64 scissors, 38 razors, $12\frac{10}{12}$ doz. pocket-knives, 1 gross pen-holders, 1 doz. cloth's brushes, 3 trunk lifts, 1 doz. shoe-brushes, 4 doz. hair-brushes, 2 hat-brushes, 8 pistol-flasks, 6 powder-flasks, 8 doz. violin-strings, 4 rulers, ½ doz. pads, 4 brass buttons, 120 pr. lifting-handles, 19 ox-bells, 15 mast-dishes, 6 tin strainers, 32 tea pots, 12 coffee pots, 14 lamp-fillers, 8 2-qrt. covered pails, 10 3-qrt. covered pails, 8 stewpans, 26 skimmer-handles, 19 dish-pans, 3 pint-basins, seventeen silver wire, 13 strainers, 4 dish-pans, 11 small dish pans, 2 oil cans, 4 tunnels, 7 sprinklers, 4 graters, 9½ pint-cups, 12 1-qt. cups, 3 scoops, 2 tunnels, 10 qt. measures, 4 pint measures, 8½ pint measures, 12 qt. measures, 11 cake-pans, 21 ladles, 5 flesh-forks, 12 skimmers, 5 ladles, 1 ventilator, 3 coffee mills, 2 smoothing planes, 8 jointers, 4 plow handles, 64 furnishing nails, 66 papers brads, 23 sprigs, 4 doz. oval stair-rods, 258 qr. cast-steel augers, 9 curry-combs, 33 hair cards, 18 taper files, 3 round files, 5½ milled files, 7½ doz. bastard files, $\frac{10}{12}$ doz. bastard files, 6½ doz. rasps, 2 horse bells, 1 mattock, 4 doz. iron spoons, 31 clothes lines, 2 doz. handles, 4½ doz. handles, 4 doz. drawer locks, 3 doz. padlocks, 9 doz. nobs, 6 doz. mineral nobs, 1½ doz. inkstands, 2 doz. drawer nobs, 1 doz. dog collars, ½ doz. harness, 4 hatchets, 2 carpet hatchets, 7 lbs. shoe-thread, 55 iron braces, 2 screw-bits, 6 doz. B knives, 8 hasps, 14 spirit levels, 8 dozen locks, 4 doz. latches, 12 mineral nobs, 49 doz. door handles, 4 latches, 4 doz. R roller, 5 rat traps, 24 set rick bill handles, 8 doz. woods, 6

plaster trowels, 16 set gate hinges, 12 plain handles, 18 drawing-knives, 2 doz. shoebrushes, 2 doz. socket chisels, 6½ doz. brick trowels, 6 chisels, 8 doz. hooks and staples, 21 doz. elbows, 2 boxes of axes, 5 axes, 1134 patty pans, 12 doz. dinner plates, 5½ doz. spoons, 19½ doz. forks, ½ doz. sugar tongs, 5½ doz. sugar shovels, 3 cream shovels, 2 butter knives, 7 sugar shovels, lot of goods sent by Norton, Jewett & Buzby, June 27 1854, to A. A. Haskins, and repurchased after delivery, and before the opening thereof; lot of goods billed by E. Corning, not opened; 35 lbs. copper bitts, 1 doz. lamps, 12 copper tea-kettles, 9 tin-top tea-kettles, 67½ lbs. 14 oz. of copper, 35 lbs. copper pitts, 6 mallets, 6½ doz. tin bottoms, 4 doz. tea-kettle tops, 57 lbs. dripping pans, 1 doz. horse rasps, 2½ doz. ½ round rasps, 2½ doz. ½ rounds, 13 mill files, 6½ round files, 5½ doz. milled files, 3 files, 1 7-inch milled files, 1 doz. rat-tail files, 12 gross screws, 72 gross coffin screws, 11 gross brass coffin screws, 33 iron coffin screws, 1 doz. 5-inch screwdrivers, 18 doz. gimlets, 51 doz. knives and forks, 56 doz. cast and rot. butts, 13 doz. brass butts, 30 double plain irons, 6 doz. pencils, 1 doz. hair brushes, 4½ doz. dog collars, 2 doz. clothes brushes, 8½ doz. sheep shears, 5½ doz. clothes brushes, 5½ common clothes brushes, 3¼ doz. pearl white nobs, 8 rim locks, 2½ Morton locks, 8 steel squares, 7½ doz. iron squares, 13 doz. rim locks, 3 doz. scratch awls, 30 door locks, 1200 carriage bolts, 5 doz. locks and latches, 1 doz. hasps and staples, 72 set castors, 10 doz. hooks, 11 doz. pullers, 3 doz. Bu., 24 doz. R., 1 gross hat hooks, 189 lbs. wire, 63 lbs. rods, 33 shovels and tongs, 110 set birk H, 1 iron pump, 145 lbs. pump chain, 6 tin-top tea kettles, 7 boilers, 5 set pitts, 5 reams wrapping paper, tin R and in box, 7¾ lbs. assorted brass wire, 6 lbs. copper wire, 2 bill booleys, 35 lbs. faucets, 2 brass cocks, 4 set bits, hock bound, 1 doz. inkstands, 61 T hinges, 13 doz. nobs, 2 ivory-handle knives, 1 pistol, 73 pocket knives, 1 shears, 12 tailor's shears, 2 ivory rules, 3 pay cer., 4 doz. R, 88 candle moulds, 6 reams sandpapers, 1 plast., 1 platform scale, 2 parlor stoves, 3 boxes tin-plate, 5 doz. bx. grates, 4½ C, 4 D, 3 door bells, 20 pair match planes, 4 handles, 24 round planes, 9 mould planes, 2 pair tal planes, 2 rabbit planes, 3 side planes, 43 hollow and round planes, 6 pair brass candlesticks, ½ doz. knives, 87½ candlesticks, 6½ doz. dust brushes, 3½ doz. spring beds, 20 whitewash brushes, 10 meg knives, 450 lbs. sheet-iron, 2 doz. dredging boxes, 2 doz. match safes, 2 nest sugar boxes, 3 doz. spittoons, 4 nest cap boxes, 18 doz. tea cer., 5 doz. match safes, 4 doz. try p-s, 5 doz. caps, 5 not., 5 staples, 1½ doz. dust pans, R, 9 frying pans, 4 molasses cups, 1 set tinner's tools, patterns, all in shop, stove and pipe in shop and store, 1 hanging lamp, 4 set M, boxes, 20 wood faucets, and 50 sad-irons, of the said plaintiff, of great value, to wit, of the value of ten thousand dollars of lawful money of the United States there then found and being, and converted and disposed of the same to his own use.

For that whereas also the said defendant, on the day and year aforesaid, and on divers other days and times between that day and the day of the commencement of this suit, with force and arms broke and entered a certain store of the said plaintiff, situated and being in the county of La Salle, in the northern district of Illinois, and then and there forced and broke open, and broke to pieces and damaged divers, to wit, doors of the said plaintiff, of and belonging to the said store, with the appurtenances; and also, during the time aforesaid, with force and arms seized and took divers goods and chattels of the said plaintiff, of the like number, quantity, quality, description, and value, as the said goods and chattels in the first count of this declaration mentioned there then found in said store, and being of great value, to wit, of the value of $10,000, and carried away the same, and converted and disposed thereof to his own use.

And other wrongs to the said plaintiff then and there did against the peace of the people, and to the damage of the said plaintiffs of ten thousand dollars, and therefore they bring this suit, &c.

FRINK & WINSTON,
Plff's Att'ys.

Endorsed: Filed June 15, 1856.
WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the 24th day of July, A. D. 1855, the above-named defendant, by Messrs. Dickey, Mather, & Taft, his attorneys, came into the said clerk's office, and filed his pleas in the above-entitled cause, in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES,
For the Northern District of Illinois.

FRANCIS WARNER
ads.
CEPHAS H. NORTON, ALBERT JEWETT, Benjamin C. Buzby, John C. Phelps, John J. Phelps, Isaac N. Phelps, and James Beeman.

And the said defendant, by Dickey, Mather & Taft, his attorneys, comes and defends the force and injury, when, &c., and says he is not guilty of the said supposed trespasses, or any or either of them, or any part thereof, within laid to his charge, in manner and form as the said plaintiffs have above thereof complained against him; and of this he, the said defendant, puts himself upon the country, and the said plaintiffs do the like, &c.

DICKEY, MATHER & TAFT,
Attorneys for defendant.

And for a further plea in this behalf, as to the breaking and en-

tering the said said store, in said declaration mentioned, and in which, &c., and seizing and taking the goods and chattels in both counts of said declaration mentioned, and converting and disposing of the same to his own use, above supposed to have been done by the said defendant, he, the said defendant, by leave, &c., says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against the said plaintiff, because he says that before the commencement of this suit, to wit, on the 23d day of January, A. D. 1855, one Augustus A. Haskins, (then) late of the county of La Salle, in the northern district of Illinois, was justly indebted to George Warren, Silas H. Sweetland, and Ezekiel C. Little, merchants and partners under the name, firm, and style of Warren, Sweetland & Co., to the amount of six hundred and two and 68-100 dollars, for goods and chattels sold and delivered by the said Warren, Sweetland, & Co. to the said Augustus A. Haskins; and in the further sum of two hundred and fifty dollars, by a certain promissory note given by the said Haskins to the said Warren, Sweetland, & Co., to wit, at La Salle, in the county of La Salle, in the northern district of Illinois aforesaid.

And the said Augustus A. Haskins, being so indebted as aforesaid, the said firm of Warren, Sweetland, & Co., acting by and through one Charles T. P. Buck, their authorized agent in that behalf, made and filed an affidavit in the office of the clerk of the county court in and for said county of La Salle, setting forth, in conformity with the Revised Statutes of the State of Illinois aforesaid, chapter 9, entitled "Attachments in circuit courts," approved March 3, 1845, and in conformity with and by virtue of another act of the legislature of the said State of Illinois, entitled "An act to amend an act establishing county courts, approved February 12th, 1849, and extending the jurisdiction of the La Salle, Winnebago, Boone, and McHenry county courts," approved February 27, 1854, the indebtedness of the said Augustus A. Haskins to the creditors above named in the sums above named exceeding the sum of twenty dollars, and not exceeding the sum of one thousand dollars, stating therein the nature and amount of such indebtedness, as near as might be, and that the said debtor, Augustus A. Haskins, had departed from the State of Illinois aforesaid, with the intention of removing his effects therefrom.

And that thereupon the said Samuel W. Raymond, clerk of said county court, on filing of said affidavit, and on the application of said creditors above named, by James Strain, their attorney, and on said creditors having given bond with security, according to the direction of the acts in such case made and provided, and filed the same with said clerk, made out and issued a writ of attachment, signed by him as such clerk, and under the seal of said La Salle county court, and directed to the sheriff of said county of La Salle, in the name of the people of the State of Illinois, in and by which writ of attachment aforesaid, after reciting said complaint, on oath,

made on behalf of said creditors by their agent aforesaid, the indebtedness of the said Augustus A. Haskins as aforesaid, the departure of the said Haskins from said State with the intention aforesaid, which also appeared on oath as aforesaid, and the giving of the bond and security aforesaid, the said sheriff was therein and thereby commanded to attach so much of the estate, real or personal, of the said Augustus A. Haskins to be found in his county as should be of value sufficient to satisfy the said debt and costs, according to the said complaint so made on oath to the said clerk in that behalf as aforesaid, and such estate so attached in his hands to secure or so to provide that the same might be liable to further proceedings thereupon, according to law, at a county court to be holden at the court house in Ottawa, within and for the county of La Salle aforesaid, on the first Monday of March (then) next, so as to compel the said Augustus A. Haskins to appear and answer the complaint of the said George Warren, Silas H. Sweetland, and Ezekiel C. Little, (the creditors aforesaid,) when and where the said sheriff was also therein and thereby commanded further to make known to said court how he should have executed said writ, and to have then there the same, which said writ of attachment bore date the said 23d day of January, 1855, and was signed and attested by said clerk, under his hand and the seal of said La Salle county court aforesaid, and being so made out and issued, was afterwards, to wit, on the 24th day of January, A. D. 1855, delivered to the said defendant, Francis Warner, who then and from thenceforth and at the time of executing and returning the same was and still is sheriff of the said county of La Salle, to be served and executed by him according to law, which said writ of attachment he, the said defendant, as such sheriff as aforesaid, afterwards, to wit, on the same day and year and at the place last aforesaid, by virtue thereof, and in pursuance of law and the statutes in such case made and provided, did so execute, by attaching and taking at the said time, when, &c., in said plaintiff's declaration mentioned, the said goods and chattels therein mentioned, as the proper goods and chattels of the said Augustus A. Haskins found in the county of La Salle, aforesaid; and the said defendant avers that the said goods and chattels so attached and taken by him as such sheriff as aforesaid, and under and by virtue of the writ aforesaid, at the said time when, &c., were as against the said Augustus A. Haskins and this defendant in that behalf, the proper goods and chattels of him, the said Augustus A. Haskins, and not of the said plaintiffs, as in said declaration is alleged.

And that he, the said defendant, afterwards, to wit, on the day and year last mentioned, at Lasalle aforesaid, made due return to said writ of attachment of the levy of the same upon said goods and chattels of the said Augustus A. Haskins, the debtor, which return was signed by said defendant, as such sheriff as aforesaid, by Arthur McGie, deputy, bearing date January 24, 1855, with a

schedule of property attached as aforesaid, thereto annexed, and that said writ of attachment, with the return aforesaid endorsed thereon by such sheriff, and schedule annexed thereto, was duly filed in the office of the clerk of said county court of Lasalle county, on the fifth day of March, A. D. 1855.

And the said defendant further says that afterwards, and before the commencement of this suit, to wit, on the 8th day of February, 1855, the said Augustus A. Haskins above named, and (then) late of the county of Lasalle, in the northern district of Illinois, was further justly indebted to the before-named George Warren, Silas H. Sweetland, and Ezekiel C. Little, in the sum of two hundred and fifty-one $\frac{49}{100}$ dollars; and being so indebted, the said George Warren, Silas H. Sweetland, and Ezekiel C. Little, acting by and through one Charles T. P. Buck, their authorized agent in that behalf, made and filed an affidavit in the office of the clerk of the county court in and for said county of La Salle, setting forth, in conformity with the Revised Statutes of the State of Illinois aforesaid, chapter 9, entitled "Attachments in circuit courts," approved March 3, 1845, and in conformity with and by virtue of another act of the legislature of the said State of Illinois, entitled "An act to amend an act establishing county courts, approved February 12, 1849, and extending the jurisdiction of the La Salle, Winnebago, Boone, and McHenry county courts," approved February 27, 1854, the indebtedness of the said Augustus A. Haskins to the said Warren, Sweetland & Little in the sum above named, exceeding the sum of twenty dollars, and not exceeding the sum of one thousand dollars, stating therein the nature and amount of such indebtedness as near as might be, and that the said debtor, Augustus A. Haskins, had departed from the State of Illinois with the intention of having his effects removed therefrom. And that thereupon the said Samuel W. Raymond, clerk of said county court, on filing of said affidavit, and on the application of said creditors, by James Strain, their attorney, and on said creditors having given bond, with security, according to the direction and requirement of the acts in such case made and provided, and filed the same with said clerk, made out and issued a writ of attachment, signed by him as such clerk, and under the seal of said La Salle county court, and directed to the sheriff of said county of La Salle, in the name of the people of the State of Illinois, in and by which last-named writ of attachment, after reciting said complaint on oath made on behalf of said creditors by their agent aforesaid, the indebtedness of the said Augustus A. Haskins as aforesaid, his departure from said State with the intention aforesaid, and the giving of the bond with security as aforesaid, the said sheriff was therein and thereby commanded to attach so much of the estate, real or personal, of the said Augustus A. Haskins to be found in his county as should be of value sufficient to satisfy the said debt and costs, according to the said complaint so made on oath to the said clerk in that behalf

as aforesaid, and such estate so attached in his hands to secure or so provide that the same might be liable to further proceedings thereupon, according to law, at a county court to be holden at the court-house in Ottawa, within and for the county of La Salle aforesaid, on the first Monday of March (then) next, so as to compel the said Augustus A. Haskins, to appear and answer the complaint of the said George Warren, Silas H. Sweetland, and Ezekiel C. Little, (the creditors aforesaid,) when and where the said sheriff was also therein and thereby commanded further to make known to said court, how he should have executed said writ, and to have then there the same, which said writ of attachment bore date the said 8th day of February, 1855, and was signed and attested by said clerk, under his hand and the seal of the said Lasalle county court, and being so made out and issued, was afterwards, to wit, on the ninth day of February, 1855, delivered to the said defendant, Francis Warner, who then and from thenceforth, and at the time of executing and returning the same, was and still is sheriff of the said county of Lasalle, to be served and executed by him according to law, which said writ of attachment, he, the said defendant, as such sheriff as aforesaid, afterwards, to wit, on the same day and year, and at the place last aforesaid, by virtue thereof, and in pursuance of law and the statutes in such case made and provided, did so execute by attaching and taking at the said time, where, &c., in said plaintiff's declaration mentioned, the said goods and chattels therein mentioned, as the proper goods and chattels of the said Augustus A. Haskins, and found in the county of Lasalle aforesaid; and the said defendant avers that the said goods and chattels so attached and taken by him as such sheriff as aforesaid, and under and by virtue of the writ aforesaid, at the said time, when, &c., as against the said Augustus A. Haskins and this defendant in that behalf, were the proper goods and chattels of him, the said Augustus A. Haskins, and not of the said plaintiff, as in said declaration is alleged; and that he, the said defendant, afterwards, to wit, on the day and year last mentioned, at Lasalle aforesaid, made due return to said writ of attachment and of the levy of the same upon said goods and chattels of the said Augustus A. Haskins, the debtor, which said return was signed by said defendant as such sheriff as aforesaid, by Arthur McG., deputy, bearing date February 9th, 1855, with a schedule of property attached as aforesaid, thereto annexed, and that the said writ of attachment, with the return aforesaid endorsed thereon by such sheriff, and schedule annexed thereto, was duly filed in the office of the clerk of the county court of Lasalle county aforesaid on the 5th day of March, 1855.

And the said defendant further says, that afterwards and before the commencement of this suit, to wit, on the eighth day of February, 1855, the said Augustus A. Haskins above named, and (then) late of the county of Lasalle, in the northern district of Illinois, was further justly indebted to Erastus Corning, Erastus Corning, jr.,

Gilbert C. Davidson, and John F. Winston, partners under the name and firm of Erastus Corning & Co., in the sum of about five thousand three hundred and twelve and $\frac{72}{100}$ dollars, which sum was then due, and being so indebted to them, they, the said Corning, Corning, jr., Davidson, and Winston, acting by and through one M. A. Neef, their authorized agent in that behalf, made and filed an affidavit, taken before one Wm. Chumasero, a notary public for said county, in the office of the clerk of the circuit court of said county of Lasalle, setting forth, in conformity with the Revised Statutes of the State of Illinois aforesaid, chapter 9, entitled, "Attachments in circuit courts," approved March 3, 1845, the indebtedness of the said Augustus A. Haskins to the said last above-named creditors in the sum above last named, stating therein the nature and amount of such indebtedness, as near as might be, and that the said Augustus A. Haskins, the debtor aforesaid, had departed from the State of Illinois, with the intention of having his effects removed therefrom, and that thereupon Philo Lindley, clerk of said circuit court of Lasalle county, on filing said affidavit made by M. A. Neef, the agent aforesaid, and on application of said Erastus Corning & Co., by Wm. Chumasero, their attorney, and on said creditor last named having given bond with security according to the requirement of the act in such case made and provided, and filed the same with said P. Lindley, clerk, &c., made out and issued a writ of attachment, signed by him as such clerk, and under the seal of the circuit court of the said county of Lasalle, and directed to the sheriff of said county of Lasalle, in the name of the people of the State of Illinois, in and by which last named writ of attachment, after reciting said complaint on oath made on behalf of said creditors by their agent aforesaid, the indebtedness of the said Haskins as aforesaid, his departure from said State with the intention aforesaid, and the giving of the bond with security as aforesaid, the said sheriff was therein and thereby commanded to attach so much of the estate, real or personal, of the said Augustus A. Haskins to be found in his county as should be of value sufficient to satisfy the said debt and costs according to the said complaint so made on oath as aforesaid, and such estate so attached in his hands to secure or so provide that the same might be liable to further proceedings thereupon, according to law, at a circuit court to be holden at Ottawa, within and for the county of Lasalle, on the 14th day of May, (then) next, so as to compel the said Augustus A. Haskins to appear and answer the complaint of the said Erastus Corning, Erastus Corning, jr., Gilbert C. Davidson, and John F. Winston, (the creditors aforesaid,) when and where the said sheriff was also therein and thereby commanded further to make known to said court how he should have executed said writ, and to have then there the same, which said writ of attachment bore date the said 8th day of February, 1855, and was signed and attested by said clerk, under his hand and the seal of the circuit court of Lasalle county, and

being so made out and issued, was afterwards, to wit, on the same day and year and at the place last mentioned delivered to the said defendant, who then and from thenceforth, and at the time of executing and returning the same, was and still is sheriff of the said county of Lasalle, to be served and executed by him according to law, which said writ of attachment, he, the said defendant, as such sheriff as aforesaid, afterwards, to wit, on the ninth day of February, 1855, by virtue thereof, and in pursuance of law and the statutes in such case made and provided, did so execute by attaching and taking at the said time, when, &c., in said plaintiff's declaration mentioned, the said goods and chattels therein mentioned as the proper goods and chattels of the said Augustus A. Haskins, and found in the county of Lasalle aforesaid; and the said defendant avers that the said goods and chattels so attached and taken by him as such sheriff as aforesaid, and under and by virtue of the writ aforesaid, at the said time, when, &c., as against the said Augustus A. Haskins and this defendant in that behalf, were the proper goods and chattels of him, the said Augustus A. Haskins, and not of the said ptaintiff, as in said declaration is alleged.

And also that the said defendant afterwards, to wit, on the day and year last mentioned, at Lasalle aforesaid, made due return to said writ of attachment, and of the levy of the same upon said goods and chattels of said Augustus A. Haskins, the debtor aforesaid; which return was signed by said defendant as such sheriff as aforesaid, by R. Thorne, deputy, bearing date February 9, 1855. And that said writ of attachment, with the endorsement of levy aforesaid thereon by such sheriff, was returned and filed in the office of the clerk of said circuit court of Lasalle county aforesaid, on the sixth day of March, 1855.

And the said defendant further says, that after the levy and return of the aforesaid three several writs of attachment, all and each of them against the same Augustus A. Haskins, the debtor, the said several suits so commenced against him by said several firms or creditors, by process of attachment in said county court, and in said circuit court of Lasalle county, were duly carried forward and prosecuted respectively to judgment in favor of the creditors named respectively in each suit in the appropriate court to judgment against said Augustus A. Haskins, and that said judgments so recovered in said courts now stand and are in full force, unpaid and unsatisfied, and that said goods and chattels so attached and levied upon as aforesaid are held by this defendant as such sheriff as aforesaid, and by the exigency of the law and the processes aforesaid, so that the same may be liable to further proceedings and process of and upon said judgments respectively, according to law.

And the said defendant avers, that at the said time when, &c., in the second count of the said declaration mentioned, he, the said defendant, as such sheriff, and by virtue of the said three several

above-recited writs of attachment, and for the purpose of attaching, seizing, and taking the proper goods and chattels of Augustus A. Haskins, the debtor, in said attachments severally named, which said goods and chattels were then there in and upon the store or premises mentioned in the said second count, and liable to be seized and taken upon said several attachment processes in the said second count, peaceably entered said store and premises without resistance, and for the purpose aforesaid of levying said attachments severally, and did so levy upon and attach said goods and chattels then and there being, as the proper goods and chattels of said Augustus A. Haskins, as he lawfully might for the cause aforesaid, and was bound to do, in obedience to the processes aforesaid, which are the said several supposed trespasses in the introductory parts of this plea mentioned, and whereof the said plaintiffs have above thereof complained against this defendant, and this he, the said defendant, is ready to verify; wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

And for a further plea in this behalf, as to the breaking and entering the said store or premises, in which, &c., in said second count mentioned, the said defendant, by leave of the court, &c., say that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says that the said close or premises in the said second count mentioned, and in which, &c., now is, and at the said time when, &c., in said second count mentioned, was the close, premises, soil, and freehold of him, the said defendant, to wit, at the county of Lasalle aforesaid; wherefore the said defendant, in his own right, at the said time when, &c., broke and entered the said close and premises in which, &c., in said second count mentioned, and committed the said several supposed trespasses in the introductory part of this plea mentioned in the said close and premises in which, &c., so being the close, soil, and freehold of him, the said defendant, as he lawfully might for the cause aforesaid, which are the said several supposed trespasses whereof the said plaintiff hath above thereof complained against him.

And this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action against him, &c.

DICKEY, MATHER & TAFT,
Att'ys for Deft.

Endorsed: Filed July 24, 1855.
WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the 15th day of October, A. D. 1855, said plaintiffs, by their attorneys, filed in said clerk's office their replication, in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES,
For the Northern District of Illinois.

CEPHAS H. NORTON, ALBERT JEWETT, Benjamin C. Buzby, John C. Phelps, Isaac N. Phelps, and James Beeman
vs.
FRANCIS WARNER.

And the said plaintiffs, by Frink, Hooper, & Winston, their attorneys, as to the said plea of the said defendant by him secondly above pleaded, as to the said trespasses in the introductory part of that plea mentioned, and therein attempted to be justified, saith, that the said plaintiffs, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant, because they say, that protesting that said several writs of attachment, either or any of them in said plea mentioned, were not issued out of said office of the clerk of the circuit court of Lasalle county, in manner and form as alleged in said plea, in favor of the person in said plea mentioned, directed to the said defendant, as sheriff of Lasalle county, or delivered to the said defendant to be executed; for replication, nevertheless, in this behalf, the said plaintiffs say that the goods and chattels in said declaration described (levied on by said defendant) were the property of the said plaintiffs, and not of the said Augustus A. Haskins, as by said defendant in his said plea alleged, and that the said defendant at the said time, when, &c., of his own wrong, and without the cause by him in his said second plea alleged, committed the said several trespasses in the intoductory part of that plea mentioned, in manner and form as the said plaintiff hath above in his said declaration complained against the said defendant.

And this the said plaintiffs pray may be inquired of by the country, &c.

And def't likewise.

DICKEY, *for d.*

And the said plaintiffs, as to the said plea of the said defendant by him thirdly above pleaded, as to the said several trespasses in the introductory part of that plea mentioned, and attempted to be justified therein, say, precludi non, &c., because they say that the said close, soil, and premises in said declaration mentioned, in which, &c., now is and at the several times when, &c., was the close, soil, and premises of the said plaintiffs, and not the close, soil, and premises of the said defendant, in manner and form as the said defendant hath above thereof in his said third plea alleged. And

they, the said plaintiffs, pray may be inquired of by the country, &c.

HOOPER, FRINK, & WINSTON,
Pl'ffs' Att'ys.

And def't likewise.

DICKEY, *for d.*

Endorsed: Filed Oct. 15th, 1855.
WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the 6th day of November, in the adjourned October term, A. D. 1855, of said court, in the record of the proceedings thereof in said cause is the following entry, to wit:

CEPHAS H. NORTON, ALBERT JEWETT, BENJAMIN C. BUZBY, JOHN C. PHELPS, JOHN J. PHELPS, ISAAC N. PHELPS, and JAMES BEEMAN, vs. FRANCIS WARNER. } Trespass.

Now, at this day came the parties by their attorneys, and upon issue joined, thereupon came a jury of good and lawful men, to wit, George W. Morton, John Davitt, Joseph Napier, Benjamin Douglass, John R. Allen, Harvey Merrill, William Sawyer, Jacob Zimmerman, William Cowdry, R. R. Stevens, Julius Warren, and Charles Douglass, who were duly elected, tried, and sworn, and the hour of adjournment having arrived, the trial of the cause is postponed until to-morrow morning.

And on the next day, to wit, the 7th day of November, A. D. 1855, in the record of the proceedings of said court, in said cause, is the following entry, to wit:

CEPHAS H. NORTON, ALBERT JEWETT, BENJAMIN C. BUZBY, JOHN C. PHELPS, JOHN J. PHELPS, ISAAC N. PHELPS, and JAMES BEEMAN, vs. FRANCIS WARNER. } Trespass.

The jury yesterday empanneled in this cause this morning returned into court; and now came the parties by their attorneys, and after proceeding in the trial of the cause until the hour of adjournment, the further trial of the same is postponed until to-morrow morning.

And on the next day, to wit, the 8th day of November, A. D. 1855, in the record of the proceedings of said court, in said cause, is the following entry, to wit:

CEPHAS H. NORTON, ALBERT JEWETT, BENJAMIN C. BUZBY, JOHN C. PHELPS, JOHN J. PHELPS, ISAAC N. PHELPS, and JAMES BEEMAN, vs. FRANCIS WARNER. } Trespass.

The jury heretofore empanneled in this cause this day returned into court; and now came the parties by their attorneys, and after hearing the remainder of the evidence, and the arguments of counsel, and receiving instructions from the court, the jury retired to consider of their verdict; and it is ordered by the court, by agreement of the parties by their attorneys, that the jury, when they shall have agreed upon their verdict, may sign and seal the same, and disperse, and meet the court at ten o'clock to-morrow morning.

And on the next day, to wit, the 9th day of November, A. D. 1855, in the record of the proceedings of said court, in said cause, is the following entry, to wit:

CEPHAS H. NORTON, ALBERT JEWETT, BENJAMIN C. BUZBY, JOHN C. PHELPS, JOHN J. PHELPS, ISAAC N. PHELPS, and JAMES BEEMAN, vs. FRANCIS WARNER. } Trespass.

The jury heretofore empanneled in this cause this morning returned into court with the following verdict, to wit: "We, the jury, find the defendant guilty; and we assess the damages of the plaintiffs at the sum of five thousand six hundred dollars and sixty-four cents."

And the defendant by his attorney moves the court for a new trial of this cause.

And afterwards, to wit, on the 3d day of June, in the adjourned May term, A. D. 1856, of said court, in the record of the proceedings thereof in said cause, is the following entry, to wit:

CEPHAS H. NORTON, ALBERT JEWETT, BENJAMIN C. BUZBY, JOHN C. PHELPS, JOHN J. PHELPS, ISAAC N. PHELPS, and JAMES BEEMAN, vs. FRANCIS WARNER. } Trespass.

The court having fully considered, and being fully advised upon the motion of the defendant heretofore filed by his attorney for a new trial of this cause, overrules the same. It is thereupon considered and adjudged by the court, that the plaintiffs have and recover of and from the defendant the sum of five thousand six

hundred dollars and sixty-four cents, their damages as aforesaid assessed by the jury, together with their costs and charges by them about their suit in this behalf expended, amounting to the sum of fifty-five dollars and thirty-five cents, and that they have execution therefor.

And on the same day, to wit, the 3d day of June, A. D. 1856, said defendant, by his attorneys, filed in open court, with the clerk thereof, his bill of exceptions in said cause, in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES,
For the Northern District of Illinois.

FRANCIS WARNER, defendant,
ats.
CEPHAS H. NORTON, ALBERT JEWETT, BENJAMIN C. BUSBY, JOHN C. PHELPS, JOHN J. PHELPS, ISAAC N. PHELPS, and JAMES BEMAN, plaintiffs.

Be it remembered, that on the trial of this cause, plaintiffs in this action claimed title to the goods, for the taking of which this suit was brought, by a sale of the goods alleged to have been made by one Haskins to them, through one Isaac Anderson, as their agent.

The proof of the plaintiffs tended to show that Beman, one of the plaintiffs, had a claim as creditor against Haskins of about $1200, and that the firm of Norton, Jewett, & Busby had a similar claim of about $3000. That each of these claims had been put in the hands of one Anderson, by the owners thereof respectively, for collection, with authority to settle or arrange in any way. That on the 10th of January, A. D. 1855, the goods were chiefly in a hardware store-room, and in the tin shop attached thereto, in the village of Lasalle; and that up to that time, Haskins had been carrying on the business of a hardware retailer, and of manufacturing tin ware in his tin shop adjoining; that while he was absent, his business was conducted for him by one Atherton, as his head clerk, who employed the operatives and superintended them—the business being done in the name of Haskins; that on the tenth of Jan., 1855, Haskins sold his stock of hardware and tinware to Beman and the firm of Norton, Jewett, & Busby, through Anderson, as their agent as aforesaid, Anderson cancelling the aforesaid debts, and giving his notes on time to Haskins for the balance of the price agreed upon; that thereupon, by way of putting the purchaser in possession, Haskins, Anderson, and Atherton being in the store-room, Haskins got the key of the front door and gave it to Anderson, and Anderson gave the key and charge of the store

and tin shop to Atherton, who up to that time had been carrying on the business for Haskins, but then undertook to act for Anderson.

That Anderson left town, and about the same time Haskins left town, and neither of them returned until after the taking by the defendant, (Haskins never having returned to reside there, and never having since resided there, or interfered with the goods in any way after the sale;) that Cephas H. Norton, Albert Jewett, and Benjamin Busby were the ostensible partners of the firm of Norton, Jewett & Busby; but that Anderson, in preparation for the bringing of this suit, was informed by the ostensible partners that there were special partners; that John C. Phelps was a special partner, and a brother of John C. Phelps.

There was no distinct evidence in the case to show that John J. Phelps and Isaac N. Phelps, or either of them, were members of the firm of Norton, Jewett & Busby, or that they ever were in any way interested in the property taken; but the witness stated he believed or supposed the parties named in the record were the parties in interest, but he did not actually know it of his own knowledge.

[It is but fair to state, that while this point was made by the defendant, it was not pressed or insisted on, and the court thinks the plaintiffs' counsel might so infer, and therefore might not have thought it necessary to furnish additional proof.]

Plaintiffs' proof further tended to show that defendant was sheriff of La Salle county, and that, as such, he did, on the ninth day of February, A. D. 1855, take and carry away the said hardware and tinware. Defendant offered evidence tending to prove, that before and at the time of said sale, said Haskins was in failing, and that certain creditors (by judgment) had sued out writs of attachment, as set forth in defendant's special pleas, against the goods of said Haskins; and that said taking, complained of in this suit, was the levying of legal process upon the said property as the property of said Haskins.

Defendants further offered evidence tending to prove that said sale was made secretly; but several of the plaintiffs' witnesses stated the sale was not made secretly, but that while the invoice was being made out, people were coming in and out of the store, as usual; that no steps were taken by any one to make it known till after said levy; that from the time of the sale, said Atherton continued to control the goods and the business as before, and to all appearance was doing so for Haskins as he had done before; that he made sales to customers as formerly, without notice to any one of the change in proprietors, and in some instances made out the bills and receipts of said sales to customers in the name of Haskins.

That no change was made in keeping the books; that the servants and operatives about the store and tin shop continued to

work under the direction of Atherton, with no knowledge of any sale, and supposing the business was being carried on as formerly, in the name and for the use of Haskins; but it did not appear that any of these things were authorized by the plaintiffs, or known to them. And that this condition and course of things continued until said goods were seized by said sheriff on the 9th day of February, 1855.

After the evidence was given to the jury, the court charged as follows, substantially:

1. That the jury must be satisfied, from the evidence, that the plaintiffs named in the declaration had a joint interest in the property sued for, or they must find for the defendant.

2. That if the jury believe, from the evidence, the sale was made for the purpose of hindering, delaying, or defrauding creditors, it was invalid as against the defendant.

3. That whether the sale was or was not fraudulent, was a question of fact, to be determined by the jury under all the circumstances of the case.

4. That if the sale was secret, and no means taken to apprise the public of the sale, these were facts which threw suspicion upon the transaction, but did not make the sale fraudulent in law as against the defendant.

5. That the jury were to determine the facts as to the possession after the sale. If a sale is made by a party, and the vender remains in possession, it is ordinarily a badge of fraud, and requires explanation. But in this case there did not seem to be any evidence tending to show that the vender (Haskins) was in possession after the supposed sale, except that Atherton retained possession, and as to his possession the jury would determine. If it was the possession of the plaintiffs, and not of Haskins, the sale was not necessarily fraudulent.

6. The court declined to charge the jury, that, as a matter of law under the facts in evidence, the sale was fraudulent as to the defendant; but left it to the jury to decide whether the sale was in good faith, and for an honest purpose.

After verdict, a motion for a new trial was overruled. To which instructions as then given, the defendant's counsel, and to each severally, then and there excepted, and also to the overruling the motion for a new trial.

Exceptions allowed.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed June 3, 1856.

WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the 12th day of June, A. D. 1856, the said Francis Warner, by his attorneys, filed in said clerk's office his writ of error, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Cephas H. Norton, Albert Jewett, Benjamin C. Buzby, John C. Phelps, John J. Phelps, Isaac N. Phelps, and James Beeman, against Francis Warner, a manifest error hath happened, to the great damage of the said Francis Warner, as by his complaint appears. And it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the law and custom of the United States, should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme [SEAL.] Court of the United States, this twelfth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eightieth year.

WILLIAM H. BRADLEY, *Clerk.*

Endorsed: Filed June 12th, 1856,
WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States, for said northern district of Illinois, do hereby certify the foregoing transcript to be a true, full, and perfect copy from the record of all the proceedings which have been had in said court in said cause, of Cephas H. Norton, Albert Jewett, Benjamin C. Buzby et al. against Francis Warner.

In testimony whereof, I have hereunto set my hand, and affixed [SEAL.] the seal of said court, at my office in Chicago, in said northern district of Illinois, this third day of December, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eighty-first year.

WILLIAM H. BRADLEY, *Clerk.*